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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AE/LBC/2017/0085**
Property	:	**32B Park Road, Wembley, Middlesex HA0 4AT**
Applicant	:	**Rehana Shah**
Representative	:	**Mr Sandham of Counsel**
Respondent	:	**Mr S. Sivakumar**
Representative	:	**Mr Ramdhun, Solicitor-Advocate**
Type of Application	:	**Determination of an alleged breach of covenant**
Tribunal Members	:	**Judge W Hansen (chairman)** **Mrs Flynn MRICS**
Date and venue of Hearing	:	**6th November 2017 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**10 November 2017**

DECISION

Decision of the Tribunal

(1) The Tribunal determines that the Respondent is in breach of Clause 2(15) of a lease dated 31 March 1989 by reason of the fact that he has, without the consent of the lessors, converted the loft space above his first floor flat into a bedroom and bathroom, the conversion works having included the installation of (i) an internal staircase, (ii) new roof lights (iii) dormer windows to the side and rear and (iv) velux windows to the front.

(2) The Tribunal determines that the Respondent is also in breach of Clause 2(14) by reason of the same facts, the conversion works having led to annoyance and inconvenience on the part of the Applicant.

Background

1. The Applicant is the landlord of premises known as 32B Park Road, Wembley ("the Property"). The Respondent is the leasehold owner of the Property, which originally comprised a one-bedroom first floor flat ("the Flat"). He holds the Property under a lease dated 31 March 1999 ("the Lease"), the original parties to which were the Applicant and her husband (now deceased) and Mr and Mrs Aurora.

2. The Respondent purchased the Flat on 3 February 2003 and was registered as the proprietor thereof on 5 March 2003. According to the parcels clause in the Lease, the property demised comprised "*the maisonette being the upper floor of the building ... including the roof*". It is common ground that at the date of acquisition there was a loft space accessible from the Property by means of a hatch but which was otherwise undeveloped. Having regard to the parcels clause, we are satisfied that the loft space was demised as part of the Property. However, that does not mean that the Respondent was entitled to convert it without regard to the leasehold covenants by which he was bound. It is common ground that in or about October or November 2012 the Respondent converted the loft space into a further bedroom with en-suite bathroom. It is also common ground that he did so without seeking any consent, written or otherwise, from the Applicant or her husband.

3. By an application dated 30 June 2017 the Applicant seeks the determination of the Tribunal that the conversion works amounted to a breach of Clauses 2(15). By her statement of case, she contends that the same facts also give rise to a breach of Clause 2(14).

4. The Respondent denies any breach and/or contends that any breach was "technical". What the Respondent actually meant by this was clarified in his oral and written submissions, his case being that the landlord deliberately made no contact with the Respondent and provided no address for service which meant that he was unable to obtain consent. He further contends that the Property has been enhanced by the work and that therefore there is no breach of covenant. Finally, he contends that the works were necessary to effect repairs and that this means that they did not amount to a breach of covenant.

The Evidence

5. We heard oral evidence from the Applicant, who was fairly but forcefully cross-examined by Mr Ramdhun. We heard no other live evidence but have had careful regard to all the written evidence adduced, albeit much of it is of limited or no relevance.

6. The expert evidence suggests that the conversion works have been carried out to a good standard, as confirmed by our visit to the Property. It also confirms that the works have added to the value of the Property, which, again, we can readily accept.

Findings

7. It is common ground but for the avoidance of doubt we find as a fact that the Respondent has never sought the landlord's permission for the alterations which he has carried out to the Property. Whilst we accept that the Respondent made some effort to locate the Applicant, we do not consider that he did as much as he could but in any event, for the reasons set out below, we consider that whether he did or not is not relevant to the question of whether he breached Clause 2(15) by carrying out the works without consent.

8. The extent of the alterations/work undertaken is common ground. The Respondent has installed an internal staircase to give access to what was previously the loft space. That space has been converted into a bedroom and bathroom. The space has been

enhanced by the addition of two dormer windows, one to the side and one to the rear. In addition, the Respondent has installed 2 roof lights and velux windows to the front. The net effect has been to almost double the available living space.

9. We find, as per the expert evidence, that the work has been done to a good standard and has enhanced the Property and added value to it.

10. We cannot be precise about when the work started but it appears to have been in or about October or November 2012. There is no evidence as to when it was completed. The first correspondence complaining about the alterations from the landlord is a letter dated 9 June 2015. The Applicant said that she and/or her husband visited the Property at least twice a year every year. That being the case, we are somewhat sceptical about the Applicant's assertion that she did not become aware of the breach until 2015 but for present purposes it seems to us that nothing turns on this and we were otherwise satisfied that the Applicant's evidence was reliable. In particular, we are totally unpersuaded by the suggestion that the Applicant and/or her husband made themselves inaccessible so that no request for consent to the alterations could ever be made by the Respondent. For most, if not all, of the relevant time, the Property has been sub-let the Property and we accept the Applicant's evidence that she did, on more than one occasion, leave a note with the sub-tenants and her phone-number which she asked them to pass on to the Respondent.

11. The Applicant also told us, and we accept, that the fact that the works had been undertaken without consent had caused her great inconvenience and annoyance, resulting in having to instruct solicitors, spend money on lawyers and take time off work to deal with the ensuing legal dispute. We also accept that the circumstances were such that any reasonable person in her position would have their peace of mind disturbed by what has happened.

12. A good deal of heat was generated during the cross-examination of the Applicant as to the circumstances in which Mr Yogaratnam had come to make a number of statements for the purposes of this application. However, he did not come to the Tribunal to give evidence and the Tribunal did not find these exchanges helpful in coming to our determination and we propose to say no more on this subject and place no weight on Mr Yogaratnam's untested evidence.

13. Finally, we are not satisfied on the evidence that the works were made necessary by any want of repair or any want of repair for which the landlord was liable.

> *"If the landlord of residential premises subject to such a covenant cannot be found, so that consent to alterations cannot be requested, the consequence is that the tenant may not carry out the alterations without being in breach of covenant".*

18. The fact that the landlord may not have complied with sections 47-48 of the LTA 1987 does not lead to a different conclusion: *Raja* at [24].

19. We are also satisfied that the same facts give rise to a breach of Clause 2(14), the material part of which reads as follows:

> *"... no act or deed or thing shall be suffered or permitted to be done in or upon the demised premises which shall be or become a nuisance or which may grow or lead to the damage annoyance inconvenience or disturbance of the Lessors"*

20. Although the lessors were unaware of the works at the time they were being undertaken and were not disturbed by them, by permitting the alterations to be made without the consent of the lessors, the Respondent has permitted an act or deed or thing to be done in or upon the premises which has, in point of fact and with the passage of time, led to the annoyance and inconvenience of the lessor. Annoyance and inconvenience are wide terms. We have already found that the Applicant's reasonable peace of mind has been disturbed by what has happened. The language of the covenant, giving full effect to the language used, is amply sufficient to cover the events that have happened and give to a breach of this covenant.

Conclusion

21. We determine that the Respondent has breached the covenants in Clauses 2(14) and 2(15) of the Lease for the reasons set out above. However, we are not going to leave this case without encouraging the parties to compromise this dispute. The work has been carried out to a good standard. Whilst the breach is not "technical", it seems to us unlikely this valuable lease will be capable of being forfeited without relief against forfeiture being granted. We strongly encourage the parties to consider whether a sensible compromise of their differences is possible, before any further time, effort or expense is devoted to this dispute.

Name: Judge W Hansen **Date:** 10 November 2017